

# Notice of Allowability

Application No.

10/538,134

Examiner

Yong Chu

Applicant(s)

YANG ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/22/2007.
2. ☒ The allowed claim(s) is/are 2-3,48-51 and 55-60 (renumbered as 1-12).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 3/22/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/22/2007 has been entered. Therefore, claims 2-3, and 48-60 are examined on the merits.

### ***Information Disclosure Statement***

Applicant's Information Disclosure Statement, filed on 03/22/2007, has been considered. Please refer to Applicant's copy of the PTO-1449 submitted herewith.

### ***Response to Amendment***

The Amendments by Applicants' representative Bonnie L. Deppenbrock dated on 03/22/2007 has been entered.

### ***Response to Arguments***

#### **Rejection under 35 U.S.C. §103(a)**

The rejection of claims 1-5, 7-12, 15-22, 24, 28, 36, and 42-44 under 35 U.S.C. §103(a) is moot, because Applicant have cancelled the claims.

The rejection of claim 48 under 35 U.S.C. §103(a) is obviated by the amendment such that R<sup>3</sup> no longer includes "aryl optionally substituted by one or more R<sup>6</sup>, and heteroaryl. Therefore, the rejection over claim 48 is withdrawn.

The rejection of claim 7 under 35 U.S.C. §112(a), 2<sup>nd</sup> paragraph is moot, because Applicant has cancelled the claim.

### ***Examiner's amendment***

An examiner's amendment to the record appears below with authorization by Attorney Bonnie L. Deppenbrock on 05/01/2007. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In claim 48 line 3 of the Amendment filed on 03/22/2007, delete "derivatives" after " and pharmaceutically acceptable", and insert --salts--.

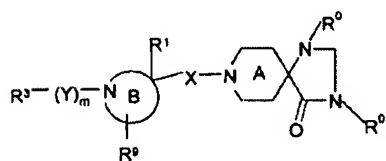
In claim 48 line 10 of the Amendment, delete "or" after " selected from R<sup>7</sup>", and insert --and--; and in line 12 of the Amendment, delete "or" after " ..groups selected from R<sup>7</sup>", and insert --and--.

In claim 48 line 13 of the Amendment, delete "or" after " ..groups selected from R<sup>7</sup>", and insert --and--.

Cancel claims 52-54.

### ***Reasons for Allowance***

The present invention is directed to a compound of the formula (I)

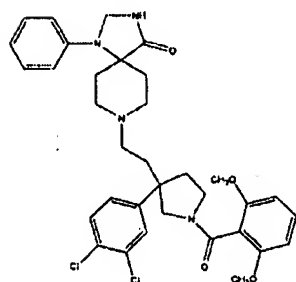


, a pharmaceutically acceptable salt thereof, or a

pharmaceutical composition comprising the compound of formula I.

The closest prior art of record is by Burkholder *et al.* WO 9426735.

WO 9426735 (Burkholder *et al.*) discloses a compound of formula



used for pharmaceutical application. The prior art compound is patentably distinct from the instantly claimed compounds of formula (I) in claims 48-51, and 55-60, because the prior art compound has  $R^3$  as methoxy-substituted phenyl group, patentably distinct from the instantly claimed compounds wherein the  $R^3$  is a non-aryl or non-heteroaryl group. Therefore, claims 2-3, 48-51, and 55-60 are allowed.

### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759. The examiner can normally be reached on 7:00 am - 3:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1626

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

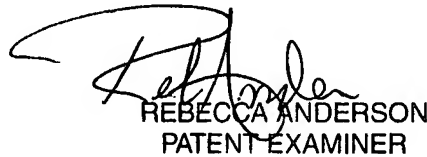
For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Yong Chu, Ph.D.  
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REBECCA ANDERSON  
PATENT EXAMINER

for

Joseph K. McKane  
Supervisory Patent Examiner  
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